



FEDERAL RESERVE BANK OF DALLAS

2200 N. PEARL ST.
DALLAS, TX 75201-2272

April 15, 2004

Notice 04-18

TO: The Chief Executive Officer of each
financial institution and others concerned
in the Eleventh Federal Reserve District

SUBJECT

Revisions to Regulation Z
(Truth in Lending)

DETAILS

The Board of Governors has published revisions to Regulation Z, which implements the Truth in Lending Act, and to the staff commentary to the regulation. Regulation Z is revised to add an interpretative rule of construction providing that where the word “amount” is used in the regulation to describe disclosure requirements, it refers to a numerical amount. The staff commentary is revised to provide guidance on consumers’ exercise of the right to rescind certain home-secured loans. In addition, several technical revisions to the staff commentary are being published.

The rule became effective April 1, 2004; however, compliance is mandatory beginning October 1, 2004.

ATTACHMENT

A copy of the Board’s notice as it appears on pages 16769–75, Vol. 69, No. 62 of the *Federal Register* dated March 31, 2004, is **attached**.

MORE INFORMATION

For more information, please contact Eugene Coy, Banking Supervision Department, (214) 922-6201. Paper copies of this notice or previous Federal Reserve Bank notices can be printed from our web site at www.dallasfed.org/banking/notices/index.html.

Rules and Regulations

Federal Register

Vol. 69, No. 62

Wednesday, March 31, 2004

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-1167]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to Regulation Z, which implements the Truth in Lending Act, and to the staff commentary to the regulation. Regulation Z is revised to add an interpretative rule of construction providing that where the word "amount" is used in the regulation to describe disclosure requirements, it refers to a numerical amount. The staff commentary is revised to provide guidance on consumers' exercise of the right to rescind certain home-secured loans. In addition, several technical revisions to the staff commentary are being published.

DATES: The rule is effective April 1, 2004. Compliance is mandatory beginning October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Eurgubian, Attorney, and Krista P. DeLargy, Senior Attorney, Division of Consumer and Community

Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping for credit. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. In addition, the act regulates certain practices of creditors.

TILA is implemented by the Board's Regulation Z (12 CFR part 226). An official staff commentary interprets the requirements of Regulation Z (12 CFR part 226 (Supp. I)), and is updated annually.

In December 2003, the Board published for comment proposed revisions to Regulation Z and to the staff commentary. 68 FR 68793, December 10, 2003. The revisions sought to add a rule of construction to clarify that the word "amount" represents a numerical amount throughout Regulation Z and the staff commentary; and to provide guidance on consumers' exercise of rescission rights for certain home-secured loans. Several technical revisions to the staff commentary were proposed. In addition, the staff requested information regarding debt cancellation and debt suspension products. Finally, as part of a rulemaking under several of the Board's consumer financial services and fair lending regulations, the Board sought to establish a more uniform standard for providing clear and conspicuous disclosures and provide guidance on how to meet that standard.

The Board received approximately 150 comment letters; about 140 letters were from financial institutions, other creditors and their representatives, and insurance providers. Eight letters were received from consumer representatives, and two letters from government officials. Most comment letters focused on the proposed definition of "clear and conspicuous" and related guidance. About 30 comment letters discussed the other proposed revisions to Regulation Z and the staff commentary.

The proposed amendment to Regulation Z defining "clear and conspicuous" and the related guidance in the proposed staff commentary are not being adopted in this rulemaking, as discussed below. With respect to the other proposed revisions to Regulation Z and the staff commentary, commenters generally supported the proposed revisions. Accordingly, the final rule and remaining staff interpretations are being adopted substantially as proposed, although some changes have been made for clarity in response to the commenters' suggestions, as discussed below.

Comments on the "Clear and Conspicuous" Standard

Under the consumer financial services and fair lending laws administered by the Board, consumer disclosures generally must be "clear and conspicuous." Assuming that most institutions already provide consumer disclosures that satisfy the clear and conspicuous standard, the Board's proposals were intended to articulate a more precise standard that could be used as a baseline to determine when an institution may not be meeting the legal standard. Currently, there is little guidance on what that standard means. Moreover, the laws and regulations contain standards that are similar but not identical. Regulation P, which implements the financial privacy provisions of the Gramm-Leach-Bliley Act, articulates more precisely than the other consumer regulations the standard for providing clear and conspicuous disclosures that consumers will notice and understand. Accordingly, the standard and the compliance guidance in Regulation P was used as the model for the December 2003 proposal, which also included compliance guidance in the form of examples of how institutions could satisfy the standard.

Although the Board's effort to establish a more uniform "clear and conspicuous" standard is supported by many commenters, almost all industry commenters strongly oppose the Board's proposal based on Regulation P. They assert that the revisions would establish more burdensome standards that would be costly to implement and expose them to litigation. For example, industry commenters stated that providing "conspicuous" disclosures that are "designed to call attention to the nature and significance of the information in the disclosure" would not be workable for disclosures contained in credit card or deposit account agreements. These commenters asserted that the proposal could mandate fundamental changes in

how institutions comply with the "clear and conspicuous" standard.

Consumer advocates generally support the proposals' goals, but they believe the proposals do not set a high enough standard. For example, some consumer advocates said that disclosures in a type size less than 10-point should be deemed too small. Some believe that the proposed guidance is too broad and could be interpreted to allow institutions to include unrelated information amid disclosures that are currently required to be segregated.

The proposed amendment to Regulation Z defining "clear and conspicuous" and the related guidance in the proposed staff commentary are not being adopted in final form in this rulemaking. Board staff is continuing to review the issues raised by the comment letters concerning the clear and conspicuous standard and is considering options to address the commenters' concerns.

Comments on Debt Cancellation and Debt Suspension Agreements

In the December 2003 proposal, the Board requested information regarding debt cancellation and debt suspension agreements. Under a debt cancellation agreement or debt suspension agreement, a creditor agrees to cancel, or temporarily suspend, all or part of the borrower's repayment obligation upon the occurrence of a specified event, such as death, disability, or unemployment. About 25 commenters, mostly creditors, insurance companies, consultants, and trade associations, responded to the Board's request for information and views about those products. They generally confirmed that the products are being made available by an increasing number of creditors in connection with many types of credit, on a wide and growing variety of terms.

The Board expressly solicited comment on the need, if any, for additional guidance about the application of TILA and Regulation Z to the sale of debt cancellation and debt suspension products. Most industry commenters generally favored expanding the current rule that allows charges for certain types of optional coverage to be excluded from TILA's finance charge and APR, if certain disclosures are provided. These commenters stated that the exclusion in the current rule should encompass all types of debt cancellation and debt suspension agreements. In contrast, a consumer group favored repeal of the current rule.

Most industry commenters requested that the Board adopt procedures for

creditors to follow when seeking to convert borrowers' credit insurance coverage to a debt cancellation or debt suspension agreement. Most commenters stated that creditors should be permitted to use the same procedures used by credit card issuers when notifying consumers of a change in the provider of credit insurance pursuant to § 226.9(f). A few commenters asserted that other applicable laws make the adoption of additional conversion rules or guidance under TILA unnecessary for debt cancellation and debt suspension products.

The Board solicited comment but did not propose any specific revisions to the regulation or commentary concerning debt cancellation or debt suspension agreements. Accordingly, today's final rule does not address these issues. Board staff will continue to gather information about debt cancellation and debt suspension products before determining whether to recommend proposing new rules or guidance.

II. Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(b) Rules of Construction

The Board proposed adding an interpretative rule of construction in § 226.2(b)(5) stating that, wherever the word "amount" is used in Regulation Z and the staff commentary to describe a disclosure requirement, it refers to a numerical amount. Examples illustrating how the interpretative rule of construction for "amount" applies to certain required disclosures were proposed in the staff commentary. The proposed interpretation addresses a recent court decision permitting narrative descriptions of amounts rather than numerical amounts to disclose the payments scheduled to repay a closed-end credit transaction. *See Carmichael v. The Payment Center, Inc.*, 336 F. 3d 636 (7th Cir. 2003); 5 U.S.C. 1638(a)(6); 12 CFR 226.18(g).

A broad interpretation of the term "amount," suggesting that narrative descriptions may replace numerical amounts, is contrary to TILA's mandate to provide consumers with clear and conspicuous credit disclosures. The *Carmichael* court's decision could lead to confusing disclosures that are not uniform.

Commenters uniformly supported the proposed rule of construction. Consumer groups expressed concern, however, that the proposed guidance in the staff commentary did not state with sufficient precision when creditors are

permitted to disclose a numerical amount other than a dollar amount.

The Board's rule of construction is being adopted as proposed. To address commenters' concerns, comment 2(b)–2 has been revised for clarity. As adopted, comment 2(b)–2 provides that the numerical amount required to be disclosed must be expressed as a dollar amount unless the text of the regulation or commentary indicates otherwise. It also provides examples of when dollar amounts must be disclosed, and when percentages may be disclosed.

Subpart B—Open-End Credit

Section 226.15—Right of Rescission

15(a) Consumer's Right To Rescind

15(a)(2)

Section 125(a) of TILA provides that, in certain credit transactions in which the consumer's principal dwelling secures an extension of credit, the consumer may rescind the transaction within three business days after becoming obligated on the debt (and for open-end plans, after opening or increasing the credit limit on the plan), and in some cases has the right to rescind for up to three years. *See* 15 U.S.C. 1635(a); 12 CFR 226.15(a)(1). The right of rescission allows consumers time to reexamine their credit contracts and cost disclosures and to reconsider whether to place a lien on their homes. A consumer exercises the right to rescind by notifying the creditor of the rescission by mail, telegram, or other written communication. Creditors must provide consumers with a form to use to exercise the right to rescind, which must include the name and address of the creditor or agent of the creditor to receive the written communication. *See* § 226.15(b). A consumer's notice is considered given when mailed, when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business. *See* § 226.15(a)(2).

Comment 15(a)(2)–1 states that creditors may designate an agent to receive the notification so long as the agent's name and address appear on the rescission form provided to the consumer. The Board proposed to revise the comment to address situations where a creditor fails to provide the required form or to designate an address for sending the notice. The proposal provided that, in such cases, if a consumer sent the notice to someone other than the creditor or assignee—such as a third-party loan servicer acting as the creditor's agent—the consumer's notice of rescission is effective if applicable law deems delivery to that person to be delivery to the creditor or

assignee. The comment is being adopted with revisions in response to the public comments.

Commenters generally favored guidance about delivery of a notice of rescission when a creditor has not provided the required form or an address for sending the notice. Consumer groups and industry representatives, including major trade associations, generally agreed that, in such cases, delivering the rescission notice to the loan servicer (the person to whom, or the address to which, payments are sent) should be deemed delivery to the creditor or assignee. In their view, in this circumstance reliance on state law is unnecessary to determine that the loan servicer is the creditor's or assignee's agent. Some industry commenters expressed concern about relying on state law to determine whether delivery to some entity other than the loan servicer might also constitute delivery to the creditor or assignee.

In response to commenters' suggestions, comment 15(a)(2)–1 is being revised to state expressly that where the creditor fails to provide the consumer an address for sending the notification of rescission, the consumer's delivery of notification to the person or address to which the consumer has been directed to send payments constitutes delivery to the creditor or assignee. This bright-line guidance provides clarity for creditors and a practical outcome for consumers. As proposed, however, the comment recognizes the possibility that the creditor or assignee also may have allowed some other entity to serve as its agent for this purpose, which must be determined by the particular circumstances under the applicable state law. Reliance on state law is appropriate to avoid penalizing consumers who were not instructed to send the rescission notice to the loan servicer and who may send the notice to another party acting on behalf of the creditor (for example, an attorney representing the creditor).

Some consumer representatives suggested that the comment be revised to clarify that rescission is effective if the creditor or assignee receives actual notice from any source, for example from legal pleadings. The suggested revision is beyond the scope of the proposal.

15(d) Effects of Rescission

When a consumer exercises the right to rescind a mortgage transaction, the consumer is not liable for any finance charges or other charges, and any security interest in the consumer's home

becomes void. See 15 U.S.C. 1635(b); § 226.15(d)(1). After the transaction is rescinded, the creditor must tender any money or property given to anyone in connection with the transaction within a specified time frame. The creditor's tender triggers the consumer's duty to return any money or property that the creditor delivered to the consumer. A court may modify these tender procedures. See § 226.15(d)(2)–(4).

Under the proposal, comment 15(d)(4)–1 was revised to state expressly that the sequence of procedures under § 226.15(d)(2) and (3), or a modification of those procedures by a court, does not affect consumers substantive right to rescind. Thus, where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.

Commenters generally supported the proposed revision. Nevertheless, a few industry representatives and consumer groups asked Board staff to address an issue not raised in the proposal. These industry representatives requested revisions to the commentary to support court decisions that affirmed the court's authority to impose equitable conditions to ensure that consumers meet their financial obligations before the creditor's security interest is declared void. Consumer groups requested revisions that would support other court decisions holding that the voiding of the security interest under TILA's rescission provision is automatic and independent of the consumer's ability to tender money or property.

Comment 15(d)(4)–1 is adopted as proposed, with some modifications for clarity, and does not address the additional issue raised by the commenters. The comment clarifies only that the sequence of procedures under § 226.15(d)(2) and (3), or a court's modification of those procedures under § 226.15(d)(4), does not affect consumers' substantive right to rescind and to have the loan amount reduced, which may be necessary before the consumer is able to establish how the consumer will refinance or otherwise repay the loan.

Subpart C—Closed-End Credit

Section 226.18—Content of Disclosures

18(c) Itemization of Amount Financed.

A technical revision is made to comment 18(c)(1)(iii)–1, to conform a citation to footnote 41 of Regulation Z. No substantive change is intended.

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions.

Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Guidance about the applicability of § 226.19 to construction loans was published in comment 19(b)–1. 54 FR 9422, March 7, 1989. That guidance has been inadvertently appended to comment 19(b)(1)–1 in the Code of Federal Regulations. The two comments are restated in their correct form for reprinting in the Code of Federal Regulations. No substantive change is intended.

Section 226.23—Right of Rescission

23(a) Consumer's Right to Rescind.

For the reasons discussed above, comment 23(a)(2)–1 is revised to state the rule for effective delivery of a rescission notice when the creditor fails to provide the required form or designate an address for sending the notice. (See **SUPPLEMENTARY INFORMATION** to comment 15(a)(2)–1.)

Section 226.23—Right of Rescission

23(d) Effects of Rescission.

For the reasons discussed above, comment 23(d)(4)–1 is revised to state expressly that the sequence of procedures under § 226.23(d)(2) and (3), or a modification of those procedures by a court under § 226.23(d)(4), does not affect consumers' substantive right to rescind and to have the loan amount adjusted accordingly, which may be necessary before consumers are able to establish how they will refinance or otherwise repay the loan. (See supplementary information to comment 15(d)(4)–1.)

Subpart D—Miscellaneous

Section 226.27—Language of Disclosures

In March 2001, the Board revised § 226.27 to permit creditors to provide disclosures in languages other than English as long as disclosures in English are available to consumers who request them. 66 FR 1739, March 30, 2001. Technical revisions are made to comment 27–1, and comment 27–2 is deleted to conform the commentary to § 226.27, as amended. No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage.

Rules for certain closed-end mortgage loans in § 226.32 are triggered, in part, by the amount of "points and fees" payable by the consumer at or before loan closing and by the "total loan amount." See § 226.32(a)(1)(ii). Comment 32(a)(1)(ii)–1, which was added in 1996, provides examples for calculating the "total loan amount." 61 FR 14952, April 4, 1996. A technical revision is made to comment 32(a)(1)(ii)–1, to correct a dollar amount given in one of the examples. No substantive change is intended.

III. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the amendment to Regulation Z. The amendment adds an interpretative rule of construction to state that the word "amount" represents a numerical amount throughout Regulation Z. In addition, revisions to the staff commentary provide guidance on consumers' exercise of the right to rescind certain home-secured loans. The amendment does not have any significant impact on small entities.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0199.

The collection of information that is revised by this rulemaking is found in 12 CFR part 226. This collection is mandatory (15 U.S.C. 1601 *et seq.*) to evidence compliance with the requirements of TILA and Regulation Z. The respondents and recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their

respective constituencies under this regulation.

The revisions provide that the term "amount" represents a numerical amount throughout Regulation Z. The revisions to the staff commentary also provide guidance on consumers' exercise of rescission for certain home-secured loans. These revisions are not expected to increase the paperwork burden of creditors.

With respect to state member banks, there are 1,312 respondents and recordkeepers. Current annual burden under Regulation Z is estimated to be 618,398 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

The Board has a continuing interest in the public's opinion of the Federal Reserve's collections of information. At any time, comments regarding the burden estimated, or any other aspect of this collection of information, including suggestions for reducing the burden estimate, may be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in Lending.

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

■ 2. Section 226.2 is revised by adding a new paragraph (b)(5) to read as follows:

Subpart A—General

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§ 226.2 Definitions and rules of construction.

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(b) *Rules of construction.* For purposes of this regulation, the following rules of construction apply:

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(5) Where the word "amount" is used in this regulation to describe disclosure requirements, it refers to a numerical amount.

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- 3. In Supplement I to part 226:
 - a. Under *Section 226.2 Definitions and Rules of Construction*, under *2(b) Rules of Construction*, a new paragraph 2. is added.
 - b. Under *Section 226.15 Right of Rescission*, under *Paragraph 15(a)(2)*, paragraph 1. is revised, and under *Paragraph 15(d)(4)*, paragraph 1. is revised.
 - c. Under *Section 226.18 Content of Disclosures*, under *Paragraph 18(c)(1)(iii)*, paragraph 1. is revised.
 - d. Under *Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions*, under *19(b) Certain variable-rate transactions*, paragraph 1. is revised, and under *Paragraph 19(b)(1)*, paragraph 1. is revised.
 - e. Under *Section 226.23 Right of Rescission*, under *Paragraph 23(a)(2)*, paragraph 1. is revised, and under *Paragraph 23(d)(4)*, paragraph 1. is revised.
 - f. Under *Section 226.27*, the section title is revised, paragraph 1. is revised, and paragraph 2. is removed and reserved.
 - g. Under *Section 226.32 Requirements for Certain Closed-End Home Mortgages*, under *Paragraph 32(a)(1)(ii)*, paragraph 1.ii. is revised.

Supplement I To Part 226—Official Staff Interpretations

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Subpart A—General

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Section 226.2—Definitions and Rules of Construction

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2(b) Rules of Construction.

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2. *Amount.* The numerical amount must be a dollar amount unless otherwise indicated. For example, in a closed-end transaction (Subpart C), the amount financed and the amount of any payment must be expressed as a dollar amount. In some cases, an amount should be expressed as a percentage. For example, in disclosures provided before the first transaction under an open-end plan (Subpart B), creditors are permitted to explain how the amount of any finance charge will be determined; where a cash advance fee (which is a

finance charge) is a percentage of each cash advance, the amount of the finance charge for that fee is expressed as a percentage.

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Section 226.15—Right of Rescission

15(a) Consumer's right to rescind.

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Paragraph 15(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.15(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.15(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.15(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivery of the notification to the person or address to which the consumer has been directed to send payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.

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15(d) Effects of rescission.

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Paragraph 15(d)(4).

1. *Modifications.* The procedures outlined in § 226.15(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The sequence of procedures under § 226.15(d)(2) and (3), or a court's modification of those procedures under § 226.15(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.

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Subpart C—Closed-End Credit

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Section 226.18—Content of Disclosures

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18(c) Itemization of amount financed.

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Paragraph 18(c)(1)(iii).

1. *Amounts paid to others.* This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled "insurance" or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in footnote 41, third parties must be identified by name.

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Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

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19(b) Certain variable-rate transactions.

1. *Coverage.* Section 226.19(b) applies to all closed-end variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. The requirements of this section apply not only to transactions financing the initial acquisition of the consumer's principal dwelling, but also to any other closed-end variable-rate transaction secured by the principal dwelling. Closed-end variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b). (Furthermore, "shared-equity" or "shared-appreciation" mortgages are subject to the disclosure requirements of § 226.18(f)(1) rather than those of § 226.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to § 226.17(c)(5). In determining whether a construction loan that may be permanently financed by the same creditor is covered under this section, the creditor may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single

combined transaction. For purposes of the disclosures required under § 226.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with § 226.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§ 226.18(f)(2)(ii) or 226.19(b).

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Paragraph 19(b)(1).

1. *Substitute.* Creditors who wish to use publications other than the *Consumer Handbook on Adjustable Rate Mortgages* need make a good faith determination that their brochures are suitable substitutes to the *Consumer Handbook*. A substitute is suitable if it is, at a minimum, comparable to the *Consumer Handbook* in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in the *Consumer Handbook*.

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Section 226.23—Right of Rescission

23(a) Consumer's right to rescind.

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Paragraph 23(a)(2).

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under § 226.23(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under § 226.23(d)(2) does not begin to run until the notification has been received. The creditor may designate an agent to receive the notification so long as the agent's name and address appear on the notice provided to the consumer under § 226.23(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivering notification to the person or address to which the consumer has been directed to send, payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.

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23(d) Effects of rescission.

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Paragraph 23(d)(4).

1. *Modifications.* The procedures outlined in § 226.23(d)(2) and (3) may be modified by a court. For example, when a consumer is in bankruptcy proceedings and prohibited from returning anything to the creditor, or when the equities dictate, a modification might be made. The sequence of procedures under § 226.23(d)(2) and (3), or a court's modification of those procedures under § 226.23(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.

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Subpart D—Miscellaneous

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Section 226.27—Language of Disclosures

1. *Subsequent disclosures.* If a creditor provides initial disclosures in a language other than English, subsequent disclosures need not be in that other language. For example, if the creditor gave Spanish-language initial disclosures, periodic statements and change-in-terms notices may be made in English.

2. [Removed and reserved.]

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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Section 226.32—Requirements for Certain Closed-end Home Mortgage

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Paragraph 32(a)(1)(ii).

1. *Total loan amount.* For purposes of the "points and fees" test, the total loan amount is calculated by taking the amount financed, as determined according to § 226.18(b), and deducting any cost listed in § 226.32(b)(1)(iii) and § 226.32(b)(1)(iv) that is both included as points and fees under § 226.32(b)(1) and financed by the creditor. Some examples follow, each using a \$10,000 amount borrowed, a \$300 appraisal fee, and \$400 in points. A \$500 premium for optional credit life insurance is used in one example.

* * * * *

ii. If the consumer pays the \$300 fee for the creditor-conducted appraisal in cash at closing, the \$300 is included in

the points and fees calculation because it is paid to the creditor. However, because the \$300 is not financed by the creditor, the fee is not part of the amount financed under § 226.18(b). In this case, the amount financed is the same as the total loan amount: \$9,600 (\$10,000, less \$400 in prepaid finance charges).

* * * * *

By order of the Board of Governors of the Federal Reserve System regarding the rule of construction, and acting through the Director of the Division of Consumer and Community Affairs under delegated authority regarding the official staff interpretations, March 25, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04-7150 Filed 3-30-04; 8:45 am]

BILLING CODE 6210-01-P